

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DENNIS NOLAND,

Petitioner,

v.

PAT HURLEY, Warden,

Respondent.

CASE NO. 2:05-cv-682

JUDGE MARBLEY

MAGISTRATE JUDGE ABEL

ORDER

On May 26, 2006, the instant habeas corpus proceedings were stayed so that petitioner could exhaust state court remedies by filing a delayed application to reopen the appeal in the state appellate court pursuant to Ohio Appellate Rule 26(B). Doc. No. 13. On that same date, petitioner filed a notice indicating that, on May 16, 2006, the appellate court denied his 26(B) application as untimely, and requesting that the Court reactivate proceedings. *See* Doc. No. 14.

Although Ohio does not permit delayed appeals in 26(B) proceedings, Ohio Supreme Court Rule of Practice II, Section 2(A)(4)(b), petitioner has forty-five days from the date of the appellate court's judgment entry dismissing his 26(B) application within which to file an appeal. *See* Ohio Supreme Court Rule of Practice II, Section 2(A)(1)(a). Because this time period has not yet expired, petitioner's ineffective assistance of counsel claim remains unexhausted.

Petitioner's request to reactivate habeas corpus proceedings therefore is at this time **DENIED**.

IT IS SO ORDERED.

s/Mark R. Abel

United States Magistrate Judge